

AMERICAN DIGITAL RADIO SOCIETY

22murray Hill Road
Scarsdale, NY 10583
914-725-2263

DOCKET FILE COPY ORIGINAL

May 7, 1998

Secretary
Federal Communications Commission
1919 M. Street
Washington, DC 20554

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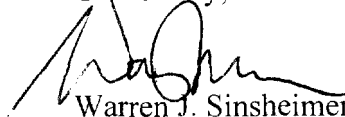
MAY 12 1998

FCC MAIL ROOM

Dear Sir;

I enclose herewith an original and four copies of our comments in opposition to RM-9259.

Yours truly,



Warren J. Sinsheimer, President

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DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

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RM-9259

Compliance With Applicable Voluntary
Band Plans in the Amateur Radio Service

To: The Chief, Private Wireless Division
Wireless Telecommunications Bureau

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**COMMENTS IN OPPOSITION TO
REQUEST FOR DECLARATORY RULING**

AMERICAN DIGITAL RADIO SOCIETY

22 Murray Hill Road
Scarsdale, NY 10583

Warren J. Sinsheimer
Its President

May 7, 1998

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Compliance With Applicable Voluntary
Band Plans in the Amateur Radio Service**

**To: The Chief, Private Wireless Division
Wireless Telecommunications Bureau**

RM 9259

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**COMMENTS IN OPPOSITION TO
REQUEST FOR DECLARATORY RULING**

The American Digital Radio Society Incorporated (the "Society") a not-for-profit corporation organized and existing under the laws of the state of Delaware whose members are all amateur radio operators licenced by the Commission submits these comments in opposition to the Request for Declaratory Ruling made by the American Radio Relay League.

1. The Request for Declaratory Ruling, if granted, would constitute an unlawful delegation by the Commission of its rule-making authority. The Commission has no authority under the Communications Act of 1934 to make such a delegation. It is apparent that the ARRL is requesting that the Commission grant to it the right to establish "band plans" within which amateurs must operate or be subject to the charge that they have failed to observe "good amateur practice" and such sanctions as the Commission may impose. The Society does not believe that the enforcement of sanctions a failure to observe such "band plans" would be sustained by any court for the reasons stated above.
2. A declaratory ruling as requested by the ARRL would, be so vague and indefinite

as to cause uncertainty and confusion in the amateur community. Whose band plan should be observed? What is "a voluntary, accepted band plan"? Is it a plan devised and monitored by ARRL? Where do more than 500,000 amateur licensee who are not members of the ARRL find the band plans? How would the issuance of a Declaratory Ruling "provide sufficient flexibility for informal, cooperative resolution of interference problems without resort to the Commission"? This request is not about *interference*. The existing rules are clear and unambiguous on the subject of interference. This request is about restricting the operating frequencies of amateurs who have a right to operate on any frequency and in any mode authorized by their licence and the rules of the Commission.

3. If there is no "resort to the Commission" to resolve problems concerning the failure to observe band plan frequency allocations, what is the purpose of a declaration by the Commission that complying with band plans is "good amateur operating practice"? The Commission has a right to enforce "good amateur operating practice". Should the Commission abrogate its right of enforcement - or, should it be embroiled in hundreds of arguments among amateurs with respect to band-plans?
4. Even without the legal impediments, the establishment of band-plans, voluntary or mandatory, is thoroughly bad public policy. In its Request for Declaratory Ruling, the ARRL does not point out any need for their request, except that there has been "some notable deterioration in adherence to the plans". The ARRL states 'non-compliance with accepted band-plans *which causes interference to one*

or more amateur stations that is or are operating in accordance with those accepted band-plans cannot be considered good amateur practice" (emphasis supplied). We agree that if a amateur station is operating on any frequency (whether part of a band-plan or not) where another station is already operating such operation is not "good amateur practice". But more important, it is interference which is cognizable by existing regulation. But if the band-plan has set aside a frequency for packet and the frequency is not in use, the use by some other mode would, in our opinion, be "good amateur practice.

5. Each country has its own rules and regulations for the amateur radio service. The operating frequencies and license privileges are uniquely under the control of the various governments. The IARU is not a governmental rule-making body. It represents no one except the individual participants in its deliberations. The ARRL is *not* "the representative of amateurs in the United States". It would be kind to say that they only represent their members who constitute about 20 percent of the U. S. amateurs. But they do not even represent their members. During the survey taken by the ARRL of its membership in 1993, a majority of the recipients opposed the establishment of sub-bands. It can be assumed that these same amateurs opposed the establishment of band-plans. Which amateurs, then, does the ARRL represent when it tries to engage in diplomatic gyrations? If the ARRL is permitted to negotiate with foreign amateurs to deprive U.S. amateurs of their full license rights it would be an abrogation by the Commission of rights granted by Congress and, would deprive U.S. amateurs of a valuable property right without due process of law.

6. It is no secret that available space is very limited in the HF spectrum. Nowhere is that more evident than in the very popular 20 and 40 meter bands. The two oldest modes of operation, voice and CW, use the lion's share of the spectrum in those bands since they were in heavy use before there were any digital modes. The digital modes have simply "squeezed in the cracks" between already established modes of operation. Since the digital modes have become established they have expanded gradually, a little at a time, primarily into space occupied by CW operation. Frequencies near the edges of digital mode operation continue to be shared by both digital and non-digital modes. Outside of the U.S., depending on the IARU region and the rules adopted by various administrations, digital operation for any given mode may not align with practice in this country, so it seems difficult to establish a sub-band plan that could be universally acceptable. It is simply inevitable that any band segment in the HF spectrum is going to be shared among differing modes of operation. This is not a new condition on the HF bands and has been accommodated for decades.
7. Since all current HF band space is actively occupied by one or another mode of operation and since no current class of user should be required to give up space for another, gradual changes will continue to occur and these changes will be due to natural migration as a larger percentage of amateurs shift to digital from other modes of operation and from one digital mode to another.
8. Except in a very few special situations it has long been the tradition (and rule) that one amateur station must not willingly or knowingly interfere with a contact already in progress regardless of the mode of operation or the perceived

importance of the communications in progress. It has also been a long standing tradition (and rule) that no station or group of stations "own" a frequency.

(Frequency "ownership" has unfortunately become a practice on certain VHF frequencies, but this practice has never been established on the HF bands.) On HF the use of voluntary sub-bands with various classes of operation gravitating to specific locations is largely self-regulating simply by virtue of the fact that a station occupying a frequency is not driven off the frequency by deliberate interference by a station operating another mode. (There are always isolated exceptions to this but it is not condoned in the rules or by the vast majority of amateur operators.) As greater numbers of amateurs use a particular mode that part of the band becomes recognized informally as a mode-specific sub-band

9. For the ARRL to equate the Commission's amendment of part 97 of *the Commissions Rules Concerning the Licensing and Operation of Repeater Stations in the Amateur Service* (ARRL Request for Declaratory Ruling p.6) to the ARRL's current request is ludicrous. The Commission ruled in that case that there should be continuous monitoring of the frequencies to avoid interference. To understand how the ARRL jumps from interference to band-plans requires a master at Chinese Checkers.
10. Band-planning is the most ineffective method of utilizing the scarce frequencies allocated to the Amateur Service. The only requirement for the efficient use of the spectrum is: If the frequency is in use, don't use it.


Therefor, the foregoing considered, The American Digital Radio Society respectfully requests that the Request for Declaratory Ruling by the ARRL be rejected in its entirety.

Respectfully submitted,

**THE AMERICAN DIGITAL RADIO SOCIETY,
INCORPORATED**

22 Murray hill Road
Scarsdale, NY 10583

By:

A handwritten signature in dark ink, appearing to read 'Warren J. Sinsheimer', written over a horizontal line.

Warren J. Sinsheimer, President

May 7, 1998